IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. Ram Ratan Meel Vs. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1083/2007

2. Mahesh Kishore Vyas Vs. JVVN Ltd. & Ors.

S.B.CIVIL WRIT PETITION NO.3164/2006

3. Manpal Singh vs. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1084/2007

4. Mahesh Chandra Arya vs. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1085/2007

5. Khursid Ahmed vs. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1086/2007

6. Mahaveer Singh vs. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1088/2007

DATE OF ORDER :: April 25, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Mukesh Vyas, for the petitioners.
Mr.Raman Deep Singh, for the respondents.

BY THE COURT:

These writ petitions under Article 226 of the Constitution of India involve common question of facts and law and, therefore, are heard and being decided together.

For the decision of these writ petitions, the facts stated in the writ petition No.1083/2007 Ram Ratan Meel vs. State of Rajasthan & Ors. are being taken as a leading case.

The petitioner was initially appointed on the post of Junior Compounder vide order Annexure-1 dt. 26.11.1994 in the pay scale 950-1680 by respondent No.3. The post held by the petitioner is equivalent to Livestock Assistant as made clear by letter Annexure-6 dt. 7.1.2004 issued by respondent No.4. Vide order Annexure-2 dt. 7.1.1999, this pay scale was revised and the petitioner was granted the pay scale Rs.4000-6000 w.e.f. 1.4.1998.

In pursuance of the order dt. 4.5.1998 Annexure-3 issued by the Finance Department (Rule Division), Jaipur, the pay

scales for the post of Livestock Assistant (Stock Man), Junior Compounder, Milk Recorder etc. after having been approved by the Vice Chancellor, were revised from 3050-4590 to 4000-6000 vide order Annexure-4 dt. 14.1.2004. However, vide order impugned Annexure-7 dt. 22.1.2007, the order dt. 14.1.2007 revising the pay scale from 3050-4590 to 4000-6000 has been cancelled by respondent No.2 under the order of Vice Chancellor.

The petitioner moved a detailed representation vide Annexure-8 dt. 27.12.2007 to the respondent No.2 seeking cancellation of the order impugned. However, no response has been given to the petitioner. Hence, this writ petition.

It is contended by the learned counsel for the petitioner that by the order Annexure-2 dt. 7.1.1999, the salary of the petitioner was fixed by adopting Rajasthan Civil Services Revised Pay Scales Rules 1998 (for short `the Rules of 1998' hereinafter). It is further contended that Rajasthan Regulation of Appointment to Public Service and Rationalisation of Staff Act, 1999 (for short `the Act, 1999 cannot be made applicable to the case of the petitioner as the Act, 1999 came into force w.e.f. 7.5.1999 and it cannot have retrospective effect. So far salary of the petitioner is concerned, it was revised by the respondents by

adopting Rule of 1998 w.e.f. 1.4.1998 vide Annexure-4 and, therefore, order Annexure-7 is contrary to law.

Learned counsel for the petitioner has relied on decisions of this Court in M.D.Lohiya & Ors. vs. State of Rajasthan & Ors., 2007 Western Law Cases (Raj.) UC, 308, Om Prakash Sharma vs. State of Rajasthan & Ors., 2005 (3) CDR 1800 (Raj.) and Bajrang Singh Rathore & Ors. vs. State of Rajasthan & Anr., 2005 (3) CDR 1812 (Raj.).

In M.D.Lohiya & Ors. vs. State of Rajasthan & Ors. (supra), this Court held as under:

> "The University in pursuant to the orders passed by the Government of Rajasthan on 24.4.1993 read with 5.8.1993 on basis of resolution No.71/94 undertaken by the Syndicate ordered to revise the pay scales of Senior Technical Assistants/Professional Assistants by Order dated 7.7.1994. Such revision was made by the university with a view to maintain parity with regard to grant of pay scales to the Senior Technical Assistants/Professional Assistants vis-a-vis Librarians working with the Government. It is true that before granting the pay scale of Rs. 2200-4000 a sanction was required to be taken by the university but in totality of facts and circumstances of the case such sanction is quite formal and the respondent State should have granted it ex-post facto. I

have intentionally used the term "formal sanction" for the reason that this court by judgment dated 8.10.1990 (SB Civil Writ Petition No. 608/82) declared the Librarians working in Government Degree Colleges entitled for getting the pay scales revised in accordance with the recommendations made by the UGC. The Senior Technical Assistants/Professional Assistants working with the respondent university for all purposes stand at par with the Librarians working in Government Degree Colleges, therefore, a cautious decision was taken by Government of Rajasthan to allow the same pay scales to them also. Looking to this fact in any event the State Government was required to accord sanction for grant of pay scale of Rs. 2200-4000 to the Senior Technical Assistants/Professional Assistants Working with the respondent university including the petitioners w.e.f. 1.1.1986. It is really surprising that the State Government instead of granting ex-post facto sanction despite a request made by the Vice Chancellor choose to victimise the employees of the University. The act of the respondents State, therefore, is not only discourteous to the university but is also unjust and arbitrary. I also failed to understand as to why the respondent State has yet not allowed the pay scale or Rs.8000-13500 to the Senior Technical Assistants/Professional Assistants working with the respondent university though the same has already been granted to the Librarians working with Government Degree Colleges w.e.f. 1.9.1996. As stated above, the respondents are under obligation to maintain parity with regard to grant of pay scales among the Senior Technical Assistants/Professional Assistants and Librarians working with Government Degree Colleges. Non grant of pay

> scale of Rs.8000-13500 to the Senior Technical Assistants/Professional Assistants working with the respondent university including the petitioners w.e.f. 1.9.1996 is highly discriminatory."

In Om Prakash Sharma vs. State of Rajasthan & Ors. (supra), this court held as under:

> "It is admitted position that the petitioner is working as Sr. Teacher who before coming into force of the Rules of 1998 was receiving the benefit of existing pay scale No. 15 as indicated in the Schedule I i.e. pay scale of Rs. 2000-3200 and after giving effect to the revised pay scales from September 1, 1996, the Revised Pay Scale No. 12 i.e. pay scale of Rs.6500-10500 was given to him. After issuance of the impugned notification with retrospective effect, the secured and vested rights of the petitioner, who was already receiving the benefit of pay scale of Rs.6500-10500 prior to July 1, 1998 have been taken away. A benefit that has accrued to the petitioner under the existing Rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Art. 309 of the Constitution of India which affects or impairs the vested rights. The Act of the State of Rajasthan in issuing impugned notification retrospectively which have the effect of taking away a benefit already available to the petitioners under the existing rule is arbitrary,

discriminatory and violative of Arts. 14 & 16 of the Constitution of India."

In Bajrang Singh Rathore & Ors. vs. State of Rajasthan & Anr. (supra), this Court held as under:

"Further vide Order dt.20.4.1998 (Annex.5) it has been provided that for the Agriculture Supervisor, the first selection grade would be Rs. 5500-9000. Subsequently, another circular dt. 23.5.1998 was issued whereby it was provided that the Agriculture Supervisor will be granted the benefit of selection grade on completion of 9, 18 and 27 years of services in the pay scale of Rs.5500-9000, 6500-10500 and 8000-13500, irrespective of their academic qualification and the fixation of their pay as per the circular dt. 23.5.1998 was in process. However, later on the latter dt. 3.9.1998 and circular dt. 12.10.1998 were issued by which it was provided that the Agriculture Supervisors who do not possess the requisite academic qualification for promotion to the posts of Assistant Agriculture Officers shall be granted 1st, 2nd and 3rd selection grade on completion of 9, 18 and 27 years of service in the pay scale of Rs.4000-6000, 5000-9000 and 6500-10500 respectively, and if higher pay has been granted to the Agriculture Supervisors in terms of circular dt. 23.5.1998, the same shall be recovered.

Thus, after issuance of the impugned notification dt. 3.9.1998 (Annex.7) and circular dt. 12.10.1998 with retrospective effect, the secured and vested rights of the petitioners have been taken away as when the petitioners were granted the first

> selection grade, they were eligible for promotion to the post of Assistant Agriculture Officers. A benefit that has accrued to the petitioner under the existing Rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the Proviso to Art. 309 of the Constitution of India which affects or impairs the vested rights. The act of the respondents in issuing impugned notifications retrospectively which have the effect of taking away the benefit already available to the petitioners under the existing rule, is arbitrary, discriminatory and violative of Arts. 14 and 16 of the Constitution of India and thus, this writ petition deserves to be allowed."

In the instant case, the respondents themselves have admitted that the post of Junior Compounder is equivalent to Livestock Assistant vide Annexure-6 dt. 7.1.2004 issued by respondent No.4 and the pay scale of the petitioner has been revised in conformity with the equivalence vide Annexure-2 dt. 7.1.1999. It has also not been disputed that the respondents have adopted Rules of 1998 providing revision of the pay and accordingly the petitioner's pay has been fixed in conformity with Rules of 1998 vide Annexures-4 and 5. The fixation of revised pay has been cancelled vide order Annexure-7 solely on the ground that the Act, 1999 requires a sanction before revising the pay scales. Firstly, the pay scales of the petitioner have been

revised w.e.f. 1.4.1998 as is evident from the order Annexure-4 dt. 14.1.2004 and the Act,1999 came into force w.ef. 7.5.1999 and, therefore, according to the learned counsel for the petitioner, it cannot be made applicable from retrospective effect in view of the decisions relied on by the learned counsel for the petitioner referred hereinabove. It is also contended that the order Annexure-7 cancelling the fixation of the pay made vide order dt. 14.5.2004 Annexure-4 has been made in violation of the principles of natural justice as the petitioner has not been afforded opportunity of hearing. The petitioner made a detailed representation Annexure-8 but the same has not been considered. In my view, the order cancelling the revision of pay has been passed with retrospective effect only on the basis of the Act, 1999, which at the relevant time was not at all in force and also does not provide retrospective effect and more so in passing the order Annexure-7, the principles of natural justice have been apparently violated and, therefore, in my view, the order Annexure-7 cannot be sustained and is liable to be quashed. However, the petitioner came with a case that he filed a detailed representation, which has not been given due consideration. It would be appropriate to remand the matter to the authorities to pass a fresh order after affording an opportunity of hearing to the petitioner.

In this view of the matter, the order impugned Annexure-7 dt. 22.1.2007 is quashed and the matter is remanded to the respondents authority to pass a fresh order after affording an opportunity of hearing to the petitioner.

With these directions, the writ petitions stand disposed of. There shall be no order as to costs.

[H.R.PANWAR],J.

m.asif/-